IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7009 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? No :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No :

5. Whether it is to be circulated to the Civil Judge? No :

RAMESHCHANDRA SOMCHAND VAGHELA

Versus

KALOL NAGARPALIKA

Appearance:

1. Special Civil Application No. 7009 of 1990

MRS DT SHAH for Petitioner

Mr.M.I.Patel for Respondent No. 1

Mr.D.P.Joshi, A.G.P.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/04/2000

ORAL JUDGEMENT

1. The present petition is filed seeking direction against the respondent Municipality to the effect that

the petitioner shall be absorbed as Octroi Clerk from 1.9.1990 onwards.

2. Ms.Shah has pointed out that the present petitioner is working since 14.9.1983 as is mentioned in Annexure : A, Page : 9. Ms. Shah has also pointed out that thereafter the matter was before the Collector and the Collector in Appeal No.2 of 1988 has passed an order to the effect that the Appeal of the present petitioner, who was one of the appellants is partly allowed and that the Municipality should verify about the earlier service of the appellants and if the appellants are entitled for the benefits, the Nagarpalika shall decided about the same. Ms.Shah has heavily relied upon a Judgment of this Court in Special Civil Application No.5469 of 1983 (Coram : A.P.Ravani, J., as His Lordship then was,) dated 12.12.1983, wherein this Court was dealing with a similar situation and relying upon the settlement arrived at between the parties i.e. Union one one hand and the Nagarpalika on the other. It was agreed that so far as question of making permanent, the daily rated employee is concerned the Nagarpalika will have to prepare the seniority list of the daily rated employees and the same will be in accordance with the seniority and the copy of the same will be given to the Union also. Thereafter, this Court has observed as under :

> "The contention of the Municipality is that the Municipality prepare a list on the basis of the seniority but thereafter the list is placed before the Selection Committee and as per the recommendation of the staff selection committee the persons are appointed to the permanent posts. Thus the basis of selection is not seniority, according to the Municipality. As per the second list, the person concerned gets a right to be considered only. On the fact of it, this cannot be considered to be the correct meaning of the settlement arrived at between the parties. When the Municipality agreed to maintain seniority list while considering the question of making the daily wage workers permanent, it is clear that on the basis of that seniority list only the daily wage workers were required to be made permanent.. Had it not been so, the settlement arrived at looses its meaning because the eligible persons have otherwise also right as to be considered for the permanent posts. The very fact that the Municipality agreed to maintain a seniority list of the daily wage workers for the purpose of making appointment on permanent basis indicates

that the Municipality had agreed to make appointment on permanent basis in accordance with seniority. There is no dispute about the fact that the petitioner is senior to respondents Nos.3,4 & 5. In this view of the matter the petition requires to be allowed."

Looking to the aforesaid Judgment and order of this Court in a similar matter, this petition is also required to be allowed.

3. At this stage Mr.M.I.Patel, learned Counsel for the respondents points out that in Affidavit in Reply filed on behalf of the respondent in Para : 3 it is stated that...."I say that there are two more daily wagers/Badli clerks who are senior to the petitioner and who are working in the respondent Municipality as such. I say that the Udayan N. Pandya is working as a Badli worker/daily wager with effect from 18.1.1982; while one Vishnubhai is working as such since 22.4.1980. I say that the said two persons have worked as clerks in other departments also; and at present they are working as such in the General Administration Department and Education Cess Department respectively. However, it is true that from amongst such daily wagers/Badli clerks who are working in the Octroi Department at present, the petitioner is senior most as he had joined the work as such with effect from 14.9..1983.." Mr.Patel also pointed out that the petitioner is not possessing the requisite qualifications for the said post and therefore the petitioner cannot be absorbed on the said post of Octroi Clerk. For ready reference the contents of Para : 4 are also reproduced herebelow :

"I further say that the petitioner has been paid his dues regularly as daily wager/Badli Clerks as and when he was employed as such. I say that the post of Octroi Clerk which has fallen vacant can be filled only by a candidate who is holding requisite qualification prescribed for the said post; and therefore I say that the petitioner cannot be absorbed on the said post of Octroi Clerk as he is not holding the requisite qualifications."

4. Ms. Shah has pointed out that the averments made in Para : 4 about the requisite qualifications are absolutely vague and they do not set out as to what is the requisite qualification. Ms. Shah has invited the attention to the Affidavit in Rejoinder filed in response to the Affidavit in Reply and in that Ms.Shah has

specifically mentioned that the petitioner is discharging his duties as clerk and is paid the salary on the basis of daily-wager. The respondent Nagarpalika has never taken any contention regarding the petitioner not holding any requisite qualification. Ms.Shah has also pointed out that if in the Affidavit reply the respondent has set out the requisite qualification the petitioner could have replied the same. It seems that the Nagarpalika has also taken contention of "petitioner not holding requisite qualification" only for the sake of raising an issue, but has not set out any details. Looking to the facts that the petitioner is working as daily-rated clerk since 1983, and even after filing this petition in the year 1990, the petitioner has continued to work as daily rated worker, on the basis of interim relief granted by this Court, the petition is required to be allowed.

5. The respondent Municipality is directed to absorb the petitioner on permanent basis considering his case on the basis of seniority. So far as granting of monetary benefits are concerned, Ms. D.T.Shah, the learned Advocate for the petitioner has fairly submitted that the respondent Nagar Palika shall be directed to pay the same from the date of the petition. However, the same shall be fixed notionally from the date of the immediate junior of the petitioner being appointed. Ms. D.T.Shah, the learned Advocate made this concession under the instructions/authority of her client-petitioner. The respondent Municipality is accordingly directed to give monetary benefits to the petitioner from the date of the petition of fixing the pay notionally from the date of the immediate junior of the petitioner being appointed. It is further directed that the respondent Nagar Palika shall pay monetary benefits determined persuant to the aforesaid direction, within two months from the date of the receipt of the writ of this Court. It is also made clear that the respondent Nagar Palika will take necessary steps to obtain necessary approval from the Director of Municipality persuant to this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

sd/-

Date : April 18, 2000 (RAVI R. TRIPATHI, J.)

sas